

REMARKS

The present Amendment After Final is in response to the Final Office Action mailed February 28, 2006, in the above-identified application. Enclosed herewith is a Petition requesting a one-month extension of time for resetting the deadline for responding to the Office Action from May 28, 2006 to and including June 28, 2006.

In the Final Office Action, the Examiner stated that the Terminal Disclaimer filed January 27, 2006, was not accepted. In response, Applicants submit herewith a new Terminal Disclaimer to overcome Application No. 10/140,153 and U.S. Patent No. 6,863,689. Applicants note that the present application is a continuation of Application Serial No. 10/035,669, and that the assignment of the '669 application to SpineCore, Inc. was filed at reel 014344, frame 0937.

The Examiner rejected claims 13-16, 18, 20-21 and 23-26 under 35 U.S.C. §103(a) being unpatentable over U.S. Patent No 5,989,291 to Ralph et al. in view of U.S. Patent No. 3,867,728 to Stubstad et al. Referring to FIG. 9 thereof, Ralph discloses an intervertebral spacer device including a first base plate 100A and a second base plate 200. The second base plate 200 includes a post member 204 having a ball-shaped head 207 projecting from an inner surface thereof. The device includes a Belleville washer 230 having a central opening 232 with a curvate volume 233 for receiving the ball-shaped head 207 of the post member 204 projecting the lower base plate 200. As shown in FIG. 9, the lateral ends of the Belleville washer 230 are not "secured" or "attached" to the inner surface of the first base plate 100A. In the present application, the specification clearly describes and teaches what Applicants mean when using the terminology "secured" and "attached." Paragraph [0015] of the specification teaches that "the restoring force

providing subassembly comprises a circular slotted arch-shaped metal spring which is secured to the lower plate and against movement therefrom at its lateral ends." Paragraph [0028] of the specification teaches that the "[p]late 100a further includes a single set of threaded holes 111 for receiving the set screws (shown in FIGS. 4a and 4b) required to affix the lateral ends of the domed arch strip spring thereto." In addition, paragraph [0031] of the specification teaches that the "lateral ends 142 of the slotted domed arch springs include holes 137 through which set screws 139 may be introduced therethrough and into the set screw holes 111 in the plate 100a to secure the spring 130 to the plate." Thus, the specification and drawings (particularly FIGS. 4a-4b and 5) clearly teach what is meant by Applicants when claiming that the spring or joint is "secured" or "attached" to one of the plates.

In rejecting the claims of the present application, the Examiner has essentially referred to a long list of definitions for the terms "secured" and "attached," and selected from the list the broadest meaning for each of the terms. Applicants respectfully disagree with this methodology. According to M.P.E.P. Section 2111.01(II), when a claim term can have more than one meaning, the Examiner is required to refer to intrinsic evidence (i.e. the specification) to identify which of the possible definitions is most consistent with Applicant's use of the terms. When referring to specification paragraphs [0015], [0028] and [0031], and drawing FIGS. 4A-4B and 5, it is clear that one of ordinary skill in the art would interpret the terms "secured" and "attached" to mean that the spring/socket is fastened or fixed to one of the plates.

For the above reasons, Applicants respectfully assert that claim 13 is unobvious over Ralph and Stubstad because the references neither disclose nor suggest an intervertebral spacer device including a first plate and a second plate "wherein an

inner surface of one of said plates comprises a ball-shaped structure extending therefrom and an inner surface of the other one of said plates has a spring secured thereto."

Independent claim 16 is unobvious over Ralph and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including a first plate and a second plate, "said device further comprising a joint that couples said first and second plates together, said joint including a ball attached with one of said plates and a socket attached with the other one of said plates, wherein said joint permits said first and second plates to move relative to one another."

Independent claim 21 is unobvious over Ralph and Stubstad because the cited references neither disclose nor suggest an intervertebral spacer device including first and second plates, "wherein an inner surface of one of said plates has a ball-shaped structure extending therefrom and an inner surface of the other one of said plates has a spring secured thereto." The remaining claims are unobvious by virtue of their dependence from respective independent claims 13, 16 and 21.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

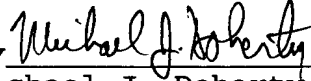
If there are any additional charges in connection with this requested Amendment After Final, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Application No.: 10/648,464

Docket No.: SPINE 3.0-446 CIP III CONT

Dated: June 20, 2006

Respectfully submitted,

By 

Michael J. Doherty

Registration No.: 40,592  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicants

667627\_1.DOC